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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re ROBERT C., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent, v. ROBERT C., Defendant and Appellant.

A156840

(Contra Costa County
Super. Ct. No. J17-01113)

Robert C. appeals from a dispositional order committing him to the Youth Offender Treatment Program (Program) at juvenile hall after he pled no contest to second degree robbery and admitted a deadly or dangerous weapon use enhancement. Robert's appointed appellate counsel filed a brief raising no issues but seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441-442. Robert was advised of his right to file a supplemental brief, but he did not file one. We discovered an arguable issue. After obtaining briefs from counsel, we conclude that the juvenile court exceeded its jurisdiction by ordering Robert committed to the Program for a maximum term of confinement that would extend beyond age 21. We modify the order and affirm.

BACKGROUND

In May 2017, Robert repeatedly punched a classmate in the face, causing his classmate to suffer a concussion and broken nose. The Contra Costa County District Attorney filed a wardship petition (Welf. & Inst. Code, § 602, subd. (a))¹ alleging Robert, who was 16 years old, committed three misdemeanors: battery on school property (Pen. Code, § 243.2, subd. (a)), resisting an executive officer (*id.*, § 69), and delaying a peace officer (*id.*, § 148, subd. (b)). Robert pled no contest to the battery count, and the remaining counts were dismissed.

By the time of disposition, Robert had improved his grades and was engaged in therapy to deal with depression and grief from the death of his father. The juvenile court declared him a ward of the court and placed him on probation with home supervision for 60 days. Among other conditions of his probation, Robert was ordered to obey all laws and was also informed that he was prohibited from owning or possessing a firearm before the age of 30. (See Pen. Code, § 29820, subd. (b).)

Nine months later, Robert robbed a convenience store while wearing a mask covering his face and armed with a BB gun that looked like a real gun. He personally held the BB gun to the store clerk's neck and demanded the clerk open the cash register. Robert's accomplice took \$342 from the register and the two fled.

The Contra Costa County District Attorney filed a supplemental wardship petition, alleging then 17-year-old Robert committed second

¹ Undesignated statutory references are to the Welfare and Institutions Code.

degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)), false imprisonment (*id.*, §§ 236, 237, subd. (a)), and that he personally used a deadly or dangerous weapon in committing both offenses (*id.*, § 12022, subd. (b)(1)). The probation department also noticed a probation violation (Welf. & Inst. Code, § 777) hearing. Robert pled no contest to the robbery charge, admitted the weapon use enhancement, and the false imprisonment and probation violation allegations were dismissed.

At the contested disposition hearing, Robert requested commitment to the Program, at juvenile hall, so he could remain close to family support. Although Robert was reported to be doing well at juvenile hall, the prosecutor and probation department argued the gravity of Robert's most recent offense and his increasing criminal sophistication necessitated commitment to the Division of Juvenile Justice (Division).

The juvenile court continued Robert as a ward of the court and ordered him committed to the Program for a maximum term of confinement of five years plus 362 days, with credit for 86 days, or until age 23 (whichever came first). The juvenile court imposed a \$100 restitution fine and victim restitution in an amount to be determined.

DISCUSSION

The juvenile court exceeded its jurisdiction when it committed Robert to the Program for a maximum term that extended beyond the age of 21. (See §§ 607, subds. (a), (b), 726, subd. (d); *In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1321, 1323-1324.)

The juvenile court may take jurisdiction over any person who is between the ages of 12 and 17 when they violate a law defining a crime. (§ 602, subd. (a); *In re Julian R.* (2009) 47 Cal.4th 487, 495.)

Thereafter, the juvenile court generally may extend its jurisdiction over a ward until his or her 21st birthday (§ 607, subd. (a)). An exception applies if the ward committed an offense listed in section 707, subdivision (b), and the court commits the ward to the Division—in which case, the court may extend jurisdiction until the person reaches age 25. (§ 607, subd. (b); *In re Antoine D.*, *supra*, 137 Cal.App.4th at p. 1320.)

Here, however, the exception does not apply. Although Robert committed robbery, which is an offense listed in section 707, subdivision (b)(3), the court committed him to the Program, not the Division. The juvenile court may only extend its jurisdiction beyond age 21 if the ward *has been committed to the Division* for an offense listed in section 707, subdivision (b). (§ 607, subd. (b); *In re Antoine D.*, *supra*, 137 Cal.App.4th at pp. 1320-1321.)

The parties agree that the juvenile court exceeded its jurisdiction but disagree on the appropriate remedy. Robert contends we should modify the disposition order to make clear the juvenile court's jurisdiction terminates at age 21. The People make a conclusory argument, without any explanation or citation to authority, that this court should remand for a new disposition hearing.

Remand is unnecessary. There is no indication that the juvenile court's mistaken jurisdictional understanding impacted any of its discretionary dispositional decisions, including its conclusion that the Program was a more suitable placement for Robert than the Division. In fact, the juvenile court made clear that it correctly understood the maximum term of confinement was a ceiling, not a fixed term (*In re A.G.* (2011) 193 Cal.App.4th 791, 800-801), and that Robert's actual

period of confinement was likely to be about one year at the Program versus approximately two years at the Division. On this record, we will modify the disposition order. (See *People v. Coelho* (2001) 89 Cal.App.4th 861, 889; *People v. Burnes* (1990) 224 Cal.App.3d 1222, 1233-1234, disapproved on other grounds in *People v. McClanahan* (1992) 3 Cal.4th 860, 868, 872, & fns. 5-6.)

DISPOSITION

The disposition order is modified to provide that Robert C. is committed to the Program for a maximum term of confinement of five years plus 362 days, with credit for 86 days, or until age 21. As modified, the judgment is affirmed.

BURNS, J.

We concur:

NEEDHAM, ACTING P.J.

REARDON, J.*

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* Judge of the Superior Court of Alameda County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.